HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.41 of 1993

8.6.2007

Between

G.Subrahmanyam (died per LRs) ..Petitioner

AND

The Land Acquisition Officer and Special Deputy Collector (Land Acquisition) Tirupati and others ..Respondents

:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.41 of 1993

It is an old writ petition which is undergoing repeated adjournments on the plea that a connected matter was pending before the Supreme Court and therefore, the decision of the Supreme Court in the said pending matter will have bearing upon the present controversy.

The present writ petition has been instituted for the following relief:

> "It is therefore just and essential that this Honouble Court may be pleased to issue a writ of mandamus or any other writ, order or direction declaring that the Land Acquisition proceedings for the acquisition of 3,251 square feet of land with structures thereon in T.S.No.26/1, Ward No.3, Block E in North Mada Street, Tirumala are illegal, invalid opposed to principles of natural justice, null and void and issue the consequential direction directing the third respondent to re-deposit the compensation amount received by her as per the Award dated 30.11.1989 to the credit of O.S.No.211 of 1982 on the file of the Court of the Additional Subordinate Judge, Tirupati and pass such other orders as may be deemed fit in the circumstances of the case."

But however, Sri T.S.Anand, learned counsel for the

petitioner upon instructions has confined the claim in this writ petition only to the alternative relief of entitlement of the writ petitioner to receive the compensation for the properties which stood acquired by the first respondent -- Land Acquisition Officer and that the writ petitioner is not interested in questioning the validity of the acquisition. It is not in dispute that a notification had been published under Section 4(1) of the Land Acquisition Act on 25.5.1987 and an Award under Section 11 of the Land Acquisition Act bearing No.8/89-90 was also passed by the Land Acquisition Officer on 30.11.1989. Since the learned counsel made a statement that the writ petitioner is no longer interested in questioning the validity of the land acquisition undertaken by the State, I am relieved of the bother to consider the correctness or otherwise of such an exercise by the State.

The learned counsel for the writ petitioner would assert that the original writ petitioner, who has since died, had instituted a civil suit – O.S.No.211 of 1982 to which the third respondent in this writ petition is impleaded as defendant No.1 -- seeking a declaration that the plaintiff has got a right to perform Tarigonda Vengamamba Mirasidar Service in Sri Venkateshwara Swamy temple at Tirumala. The plaintiff also sought for a permanent injunction for recovery of suit schedule properties from the possession of defendants 1 to 3 in the suit. The suit was contested and ultimately by the judgment dated 6.10.1991, O.S.No.211 of 1982 came to be decreed. Since we are only concerned with item 3 of the suit schedule properties in the present writ petition, it will be appropriate to notice as to how the matter came to be decided by the trial Court as well as by

this Court while dealing with the Appeal preferred against the said judgment and decree in O.S.No.211 of 1982. The trial Court has concluded the issue relating to item No.3 in the following manner:

> "Issue No;.9:- In view of the findings on the above issues the plaintiff is held entitled for declaration of the right to Tarigonda Vengamamba Mirasi service of performing the Kainkaryam in Srivari temple at Tirumala and also for a permanent injunction restraining the defendants from doing the said service. The plaintiff has also prayed for a consequential relief of recovery of possession of the plaint schedule properties, which are in three items. Item No.1 is an extent of 58 cents called Samadhi Thopu, wherein the tomb of Tarigonda Vengamamba is situated. It is not in dispute that the T.T.Devasthanams acquired 45 ½ cents out of 58 cents in the land acquisition proceedings and also paid away the compensation to DW.1. Ex.B.12 is a memo by the T.T.Devasthanams relating to the acquisition and Ex.B.13 is the field sketch. DW.1 testified that except an extent of 12 ½ cents, which is covered by tomb the remaining extent of item No.1 is acquired by T.T.Devasthanams even during her father-in-law's time and so she is not in possession of the same. According to her, the said land was given free of cost and no compensation was paid by T.T.Devasthanams and there might be record with T.T.Devasthanams regarding the same. The T.T.Devasthanams has not chosen to produce the said record though the plaintiff gave a notice to produce the same. Item No.2 is the zinc sheet shed of an extent of 2 cents. DW.1 deposed that the said shed is let out for shops and there are three tenants by name Baktavatsalam Chetty, Murali and Prabhakar paying Rs.150/- each other

month since 7 or 8 years. Item No.3 is a house known as Vengamamba house in an extent of 9 cents. According to DW.1, the said house stands in the name of her husband since about 12 years. He filed Ex.B.14 file relating to the tap connection obtained for the said house by G.V.L.N.Murthy and Ex.B.15 bunch of property tax demand notice in the name of G.V.L.N.Murthy. In the cross examination, she stated that about 4 or 5 years back and subsequent to the death of her husband, T.T.Devasthanams acquired the back yard of the house and paid compensation also. She admitted that the received the compensation, but stated that she does not remember the amount. The documentary evidence on record shows that the plaintiff has repeatedly sent notice to the T.T.Devasthanams objecting for payment of compensation to DW1 especially during the pendency of this suit and requesting that the amount may be deposited to and requesting that the amount may be deposited to the credit of this suit. But the T.T.Devasthanams seems to have paid away the compensation to DW.1 herself. DW.1 also admitted that she received notice from plaintiffs objecting her from receiving the compensation. Whatever it be, the fact remains that 1st defendant is not in possession of the entire item No.3, the backyard appurtenant site having been acquired by T.T.Devasthanams, she admittedly is in possession of the house situated in item No.3. Thus, T.T.Devasthanams has acquired 45 cents out of item No.1 and the back yard site of item No.3 and 1st defendant is in possession of only remaining extent. As per the terms of Ex.B.1 will, Suryanarayana and his successors were entitled to be in possession and enjoyment of the suit properties without rights of alienations as long as there is a male issues in

> their family and in the absence of male issues, the said property shall revert to the heirs of Chidambarappa and they shall be in possession and enjoyment without rights of alienation. In view of the findings on the above issues the plaintiff who is the son of Chidambarappa became entitled to perform the mirasi services and also to the properties under the terms of Ex.B.1 will, consequent on the death of 1st defendant's husband G.V.L.N.Murthy without male issues. The plaintiff is held entitled to recover the portions of the suit properties, which are in possession of 1st defendant.
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> In the result, the suit is decreed with costs."

The defendants in O.S.No.211 of 1982 have preferred A.S.No.2582 of 1989 to this Court. To the extent the relief is denied by the trial Court, the plaintiff has preferred Cross Objections therein. A.S.No.2582 of 1989 together with the Cross Objections was dealt with by a learned Single Judge of this Court and by his judgment rendered on 17.4.1995, the learned Single Judge had concluded the issue relating to item No.3 of the suit schedule properties in the following manner:

> "Item No.3 is a house, the 1st defendant (DW.1) in her evidence, stated that the backyard portion of that house was acquired by the 4th defendant / T.T.D. In the cross examination, the plaintiff has not disputed such acquisition, that stated compensation was wrongly paid to DW.1. Admittedly, the family of the first defendant DW.1 was rendering services and if the compensation was paid to the family of DW.1,
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> I do not think that there is anything improper. The contention of the plaintiff is that in Ex.B.1 will, there is restriction on the family of DW.1 that they

shall not alienate the property. But what is prohibited under Ex.B.1 is a voluntary alienation but an acquisition. From the material on record, it is clear that the portions in items 1 and 3 have been acquired by the 4th respondent/ T.T.D. in item nos.1 and 3 of the suit property. Since the acquisition as such, has not been seriously disputed by the plaintiff and the dispute of the plaintiff was only regarding compensation, whether it was to be paid to the plaintiff or to the defendants, I don't think that the judgment and decree of the trial court suffers from any illegality. The non production of documents by the 4th defendant/ T.T.D. regarding such acquisition proceedings also has no such consequences. From these circumstances, it is clear that there is no error or illegality in the impugned judgment and decree to the extent the relief is refused to the plaintiff, for which the cross examinations are filed.

In the result, both the appeal and cross objections are dismissed, but in the circumstances of the case, without costs."

It is stated that against the judgment rendered by the learned Single Judge, the original defendants in O.S.No.211 of 1982 preferred Letters Patent Appeal No.43 of 1996 which was dismissed on merits on 16.4.1996 whereas the plaintiff had preferred L.P.A.No.77 of 1997 aggrieved by the judgment of the learned Single Judge in dismissing the Cross Objections preferred by him in A.S.No.2582 of 1989. Ultimately, L.P.A.No.77 of 1997 was dismissed as abated for failure to prosecute the matter in time by the legal representatives of the deceased plaintiff. It is that order passed by this Court in L.P.A.No.77 of 1997 which is carried by way of an Appeal to the

Supreme Court and the said matter is said to be pending consideration of the Supreme Court. Therefore, the learned counsel would urge that in the event the Supreme Court decides the issue and upholds the plea of the original plaintiff, the matter in the present writ petition will have to be fine-tuned on the same lines of the decree that is liable to be passed ultimately in the matter arising out of O.S.No.211 of 1982.

I am afraid, this plea cannot be accepted at this stage for, the validity of the Land Acquisition proposals is the principal subject matter of the consideration in this case. Since the parties have reconciled not to question the validity of the land acquisition proposals, the writ petitioner or his legal representatives are entitled to establish their right to receive adequate compensation pursuant to the acquisition undertaken by the State under the notification issued by it and published on 25.5.1987.

Sri Adinarayana Raju, learned Standing Counsel and Sri P.B.Vijaya Kumar appearing for the contesting respondent have raised a plea that the trial Court as well as the first appellate Court have negatived the claim of the original plaintiff to receive the compensation over the properties which compulsorily stood acquired and therefore, no attempt should be permitted by the writ petitioner and his successors to get over such a decree passed by the Civil Court. As pointed out supra, to the extent that the trial Court had denied to grant relief for receiving the compensation to the original plaintiff, which decree came to be affirmed by the first appellate Court while deciding A.S.No.2582 of 1989 together with Cross Objections preferred by the plaintiff, the same cannot be got over by the present writ petitioner or his

successors without in any manner getting the said decree modified. It would be a different matter if the L.P.A.No.77 of 1997 or the matter pending before the Supreme Court is decided in favour of the original plaintiff in O.S.No.211 of 1982. Till the decree passed in O.S.No.211 of 1982 as affirmed in A.S.No.2582 of 1989 is subsisting, the writ petitioner or his successors cannot seek payment of compensation over the properties which stood acquired. Only upon the modification of the decree passed in O.S.No.211 of 1982 as affirmed in A.S.No.2582 of 1989 alone, such a question would arise. Until then, as per the decree of the Civil Court, the writ petitioner or his successors cannot seek or receive any compensation for the properties acquired by the State.

But in the present case, the writ petitioner or his successors are interested in agitating about their right to receive the compensation for divesting them off the Tarigonda Vengamamba Mirasidar Service liable to be performed by them in Sri Venkateshwara Swamy temple at Tirumala. Only to this extent, the present controversy is answered. Therefore, I do not find that the objections raised by Sri Adinarayana Raju and Sri P.B.Vijaya Kumar should detain this Court from deciding the present controversy.

As at present, the Land Acquisition Officer has to necessarily consider as to whether the original writ petitioner and his succeeding branch are entitled for receiving compensation to the extent that the Mirasidar Service for which they are entitled to, has been divested off them by virtue of the compulsory acquisition of the property itself. If acquisition of the properly has got nothing to do with the Mirasidar Service to

be performed, perhaps the question of payment of compensation does not arise. The decree passed by the trial Court in O.S.No.211 of 1982 to this extent has attained finality between the parties. Therefore,

I consider it appropriate to direct the first respondent—Land Acquisition Officer to consider as to the quantum of compensation which the original writ petitioner and his branch of successors are entitled to receive and to that extent, compensation is liable to be paid to them. This issue has not been examined so far by the Land Acquisition Officer. Therefore, the same has got to be determined by him within a period of three months from today. Depending upon such determination, the right to receive such compensation either may accrue or may not arise. Therefore, if the Land Acquisition Officer finds that the original writ petitioner and his successors are divested off the Mirasidar Service together with the property in question and consequently, the same is liable to be compensated, it is only appropriate that such compensation should be paid within a further period of one month from the date, the determination is made. If in the meantime, the Supreme Court decides the matter or in any manner if any further decree is liable to be drawn up in favour of the original plaintiff in O.S.No.211 of 1982, the same will also be appropriately given effect to by the Land Acquisition Officer.

With this, the writ petition stands disposed of. No costs.

NOOTY RAMAMOHANA RAO.J.

8.6.2007

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